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Teachers in any subject area should be aware of the concerns of the poor, particularly in law. Family law has become harsh upon the poor; leading casebooks contain little about the law of neglect, about family court orders of protection, or about rules applicable to the program of Aid to Dependent Children. Criminal law and property law present similar problems. Fundamentally, law faculties use casebooks and textbooks as sources of information. Until these items are introduced into textbook form, the lag in instruction is likely to continue. Some instructional contributions made by law schools are described.

Legal research is done in the law schools. Through the research efforts and the knowledge of law faculties, contributions can be made toward changing rules of law to benefit the poor. Law faculties, students, and lawyers can assist in training lay persons to assist in services requiring advocacy and advice. Better communication between those who give legal help and those who need it will improve community relations. A new feeling of concern has been awakened in the legal field by the War on Poverty. New opportunities exist through legal services established to help the poor. Law schools are recognizing the need to train students and the need to participate in the growing field of legal aid to the poor.

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THE LAW SCHOOLS AND THE WAR ON POVERTY

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I. Introduction

"Out of sight, out of mind" expresses an insight applicable to a great many situations in addition to that in which separated sweethearts find themselves. This truth, so universally demonstrated by the conduct of men, applies, as well, to the economic, legal, and personal difficulties of the disadvantaged and the unaffiliated.

A distressing paradox of our day is this: appalling and destructive poverty is present in the midst of unparelled economic prosperity. Those who would make our world better have puzzled desperately over the question how to make "war" on poverty or, at least, how to mitigate its effects. The public and private measures so far taken have obviously been inadequate. One trouble, so it is said, is that the poor themselves, those affected by anti-poverty programs, have not been consulted in the planning. What benefactors perceive as desirable or useful for the poor may be neither. Better communication between those who would give help and those who need it will not only improve plans for assistance, but ought also to improve the quality of personal relations throughout the community. It is hard for the unconsulted to appear dignified, even to themselves.

In one way or another the law schools of the United States have contributed to the lack of communication between the poor and the powerful. Our law school courses have generally focused upon the legal problems of men of means. It is understandable that the schools should have emphasized the concerns of those who can employ their product. Nevertheless, as a law teacher, I feel guilty of gross neglect rather than of underemphasis. I

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feel that the curriculum, for which teacher are responsible, has failed to sensitize our students to the legal needs of those who have no property. We teachers, most of us at any rate, have not seen to it that our students have understood the ways in which they might assist the under privileged. Even the energy we have given to law reform has been generally directed to middle class concerns.

The "War on Poverty" has awakened a new conscience in many of us. We have, I believe, a new awareness of "forgotten men". Ironically, today there are even new professional opportunities, offered by legal services units serving the poor, which our students can embrace. This prospect for new ways of making a living happily serves both our conscience and our traditional commitment to the training of self-supporting practitioners. Now we can put more teaching emphasis on the problems of the poor not only because it is right but because it is a way of properly training professionals for employment.

What kinds of things can the schools do? What ought they to do? On October 12, 1965, the National Institute of Mental Health sponsored a Conference on the Extension of Legal Services to the Poor. At the Conference, attended by thirty or forty law teachers, the participants spoke informally about these issues. I would like to share with you some of the ideas which emerged from that stimulating and useful occasion.

II. A New Look at Old Courses

One general theme, which ran through much of the talk, insisted that we teachers ought to make ourselves aware of the concerns of the poor in relation to whatever subject matter we profess to teach. Each teacher can gain a new perspective on his work if he asks whether segments of the

law in his courses are helpful, irrelevant, or destructive in relation to the impoverished. The new perspective can bring problems into sight so they can be kept in mind.

Family law, for example, is filled with rules which bear harshly on the poor. We need only mention an old chestnut in this regard. In my own State of New York, as most of you know, divorce is possible only on the ground of adultery. To the upper and middle classes this restrictive rule is inconvenient, but it is not an absolute barrier to the formation of new family relationships. Marital freedom can be arranged after a flight to Mexico or a stay in Nevada--options not open to the clients of the Legal Aid Society. Indeed, it is true to say that in New York we have two systems of family law operating side by side. Family offenses, support matters, neglect petitions, and the overwhelming number of delinquency adjudications involve families with low incomes. These problems are resolved in the New York Family Court. Matrimonial litigation, that is proceedings seeking judicial separation decrees, divorces, custody orders and alimony, generally involve middle and upper income litigants, and are carried on in the highest trial court of general jurisdiction in New York--the New York Supreme Court.

A sign of the existence of two systems of family law is the current dispute in New York over whether the Family Court should be given exclusive jurisdiction over adoption (certainly the plan of original Family Court Act of 1962) or whether the Surrogate's Court should also be empowered to decree adoptions. The rather shabby looking public waiting rooms available to the Family Court as well as the rather shabby looking people who sit in them have been points made in favor of continuing the Surrogate's power.

The happiness brought by a new child's coming to an affluent family ought not to be marred by the sight of the neglected and their families.

New York's double standard in family law is not a singular phenomenon. In every state, a similar pattern can be identified. Even so, the courses we teach, generally speaking, and the teaching books we use reflect only one of the family law systems. Up to this moment the leading casebooks in family law contain little or no reference to the kinds of issues with which a juvenile court or family court is concerned. There is much in these books on anti-nuptial agreements, separation agreements and economic relations between husband and wife, topics of concern to men of property, but almost nothing about the law of neglect or Family Court orders of protection or the rules applicable to the program of Aid to Dependent Children. Most of us teaching in the field have kept these subjects out of sight.

In the area of criminal law American law school teaching has perhaps been more sensitive to the problems of poverty. We have learned that an adversary system posits adversaries of roughly equal strength in order that an approximation to truth may emerge at the time of judgment rather than the advantage which power alone might produce. We have discussed with our students the need for an adequate defense counsel and for the resources which must be made available to support a proper defense. We have become aware of the impact of our bail system upon the poor through the work of Professor Caleb Foote, lately extended and elaborated by research of the Vera Foundation. In many places the law schools have participated in local bail projects. In the drafting of new penal codes there has been an awareness of the way in which the criminal law bears upon the poor. The Model Penal Code, drafted by schoolmen, has provided and will continue to provide an example for legislators in the tasks of reform.

A teacher of property law, attuned to the interest of the urban poor, is more likely to be vitally concerned with urban renewal, periodic tenancies or tenancies at will rather than with contingent remainders and their destructibility. He is likely to see the problems of access to public housing as more important than the question over this transfer of farm land.

In short, the new public concern with poverty calls for the sensitive, responsible teacher to take a fresh look at the course he teaches, whether it be contracts, torts, or creditors rights, and to consider the impact of rules from the point of view of the poor and to ask whether the traditional boundaries of the course embrace the main points of a student's interest in 1965.

III. Research

The University is the center of intellectual investigation in the United States. If the rules of law are to be changed wisely to benefit the poor the changes must be made in the light of legal research and legal research is done in the law schools. Members of law school faculties can make an enormous contribution to the War on Poverty, simply by giving us their wisdom, energy and time.

We must take care not to delude ourselves. Law school deans and faculties can no more command worthwhile research or control its direction than a modern King Canute can gain obedience from the tides. Deans can encourage, faculty members can suggest, but intellectual work of quality is produced only by a scholar with a tiger in his tank. Actually, my little caveat may be beside the point because interest and commitment on the part of faculty members does exist. I see no lack of law school men on this program. There was no failure of faculty response to the call of the N.I.M.H. Conference on The Extension of Legal Services to the Poor.

No area of research needs more attention than the law of the legal

profession, the rules respecting the organization and conduct of the Bar itself. The Supreme Court of the United States has already invited reorganization of the profession to permit the use of lawyers by groups of persons in ways never permitted before. Legal practices which serve members of associations for prepaid fees seem likely to develop although the present professional canon against intermediaries between lawyer and client would seem to forbid or restrict them. Well established prohibitions against solicitation of clients will undoubtedly undergo modification because legal services for the poor will be extended, in part, through close cooperation with social workers, religious leaders, education specialists and others. Those who seek to help the poor will uncover much of the law business which will go to the Legal Units of neighborhood aid centers.

Change, rapid change, is on the way, yet there is danger that we will move too fast or will move in the wrong direction. The traditional rules governing the conduct of American lawyers have been formulated to assure a lawyer's undiluted commitment and loyalty to his client. Though the present expression of the rules is restrictive, they aim at a serious set of problems. New rubrics, less confining, but focused upon the old evils must be formulated. The legal profession itself has expressed its concern by undertaking a project which will reexamine the American Bar Association's Canons of Ethics. This project, and others like it, will require assistance from the schools if it is to be wise.

Other problems of the profession remain. Let me point to an example. Services to the poor will undoubtedly call for advocacy and advice by lay persons as well as lawyers. A lawyer's time is costly. Not every problem thrown up by legal arrangements requires the skill and costly time of a law-trained person. We can expect the creation of advice centers operated by laymen not unlike Britain's Citizen's Advice Bureaus. It will not be

easy to delineate the appropriate differences of function between lawyers and lay people in such a setting. Progress toward solving this problem can be made by a talented law teacher who is generous enough to give us his time.

The new emphasis on law and poverty has already uncovered some hitherto neglected areas for research such as the legal problems in welfare administration. Professor Charles Reich of Yale and Mr. Edward Sparer, Director of Mobilization for Youth's Legal Services Unit, have given us examples of the possibilities for scholarly work in this field.

New research enterprises interested in the legal problems of welfare are being organized. At New York University a Project on Social Welfare Law was instituted in April of this year. The Project will concern itself with research into questions respecting the rights of people who receive public benefits or are entitled to social protections. If I am correctly informed, the Project is designed to spur publication in areas such as welfare, unemployment compensation, old age and disability insurance, housing and child welfare programs. Further, it will seek to develop materials for law school courses and to make legal material available to all interested persons, particularly lawyers. The Project is a part of the Arthur Garfield Hayes Civil Liberties Program and will be directed by a new member of the New York University faculty.

Another project concerned with welfare law has been established at the Columbia University School of Social Work. Close cooperation with the Columbia Law School is assured by the membership of five of the law school faculty on the project's advisory committee. The aim of this Columbia effort, called "The Welfare Law Testing Resource", is to do research in the field

of welfare law, but its interest is not limited to research alone. The resource will participate in action. In a few selected cases it will give active assistance to lawyers engaged in welfare litigation. Although the final form of the enterprise has not been determined, it is highly probable that on appropriate occasions briefs will be prepared to assist the attorney of record.

In addition to programs of exchanging information, of research into existing law and of legal action, there is need for a program designed to suggest improvement in legislation policy in the area of welfare. To such a research program should be added a training function offering instruction to lawyers and non-lawyers alike. Most lawyers know little about that part of the law of importance to the poor. The non-lawyers will be the source of much of the business that is sent to a legal services unit. It is my understanding that the Office of Economic Opportunity has already provided the funds for a training program of this sort at Howard University.

IV. Instruction In New Forms

Some of the instructional contributions of the law schools to the War on Poverty antedate the declaration of hostilities. Beginning in 1960 the National Council on Legal Clinics, supported by a grant of $800,000 from the Ford Foundation, undertook an ambitious program of education "for professional responsibility". In part, the National Council has sought to stir the consciences of faculties and would-be lawyers by supporting law school experimentation and "clinical" instruction, and by publishing teaching materials consistent with the interest of the Council.

The Council has supported the publication of an excellent collection of materials on Professional Responsibility and the Administration of Criminal Justice, by Professor Murray Schwartz of the University of California Law

School. Professor Schwartz' materials confronts students with such problems as how to furnish counsel to indigent persons accused of crime and the question how to meet a lawyer's obligation to serve "unpopular" persons and the members of a despised group. The latter topic has been emphasized further by Professor Howard Sacks, the Administrator of the National Council, with his Council booklet, "Defending the Unpopular Client". This latter topic is of high importance in a nation containing states in which it is virtually impossible to obtain local counsel for Negro clients in civil rights cases. The Council has also supported the preparation and publication of materials respecting professional responsibility in the area of family law.

Besides publishing the books the National Council has supported experimental legal clinics in a number of law schools. The Preliminary Reports on the seven experimental projects were published by the Council in 1962. Reference to two reports can suggest the kinds of law school work undertaken and the kinds of benefits to law students which are recorded in the evaluations of the projects. The University of Minnesota students in Professor Robert Levy's family law seminar engaged in clinical work in juvenile court cases, participated in an illegitimacy case handled by the local welfare department, in an adoption matter and so forth. The aim was to give law students first-hand experience with cases arising from disadvantaged groups and to arrange for the students' participation in cases together with trained social case workers. Professor Levy's report asserts that a principal value of the program was to put students in contact with a part of society which most of them have not known.

> The success of the program in making the students "aware of the problems of classes of society with which they might have had little contact and to encourage them to take a continuing interest

> in those problems" has been especially noteworthy. The students were exposed to illegitimacy as a social fact and had the opportunity to see at first hand the societal problems which unwed motherhood entails. In their dependency-neglect and parental termination assignments the students had the opportunity to observe and understand the special problems of the very poor, the Negro, and the very dull members of their community. The student's week of experience in the Legal Aid Society and their divorce counseling work made them focus on the social problems, for the parties and for the community, which are frequently the result of divorce among under privileged groups.

At Northwestern University in a program directly under the supervision of Professor Sacks, a few students participated in a training project designed to enhance understanding of the lawyer's role as a counselor. In the seminar questions were raised respecting how far a lawyer should go in helping his client with the non-legal aspects of a problem and respecting the way of using psychiatrists and social workers when clients come to lawyers. In the preliminary evaluation Professor Sacks asserted that the greatest success was achieved in promoting "cooperation between lawyers and the members of other helping professions, especially social work and psychiatry." In serving the poor, lawyers undoubtedly will work side by side with social case workers, psychiatrists and members of other helping professions. If, indeed, the Northwestern clinical program has achieved a measure of the success it has claimed, it has made a contribution to the solution of the problems of lawyering for the poor.

The National Council of Legal Clinics is still active. On June 14, 1965, it announced a grant to the University of Chicago to help finance summer intern programs for 12 students. The fellowships granted these students will be used to pay the expenses involved in engaging in field work in a place chosen by the student. The Fellows will work in law and law-related activity in agencies all over the country. For example, two students will work with

the Legal Aid Agency of the District of Columbia. Another will work with the Cleveland branch of the NAACP, another in the social service department of the Municipal Court in Chicago. When classes resume in the Fall the students will be expected to share their experiences at seminars and conferences to be attended by other students at Chicago, as well as by some faculty members.

Legal aid service during the regular year is avilable to students in a great many law schools. For example, at Columbia, between 40 and 50 students participate in the work of the New York Legal Aid Society. These men and women are given the opportunity to do legal research and writing respecting the cases presented by the Society, to talk with clients and work with attorneys in a busy law office. Students are assigned to the Legal Aid Society's Harlem office, the Main Office, and the Criminal Courts Office for at least one morning or afternoon per week. The New York legislature has just made it possible for student experience in the Columbia program to be significantly broadened. Third year students will now be able to appear in court in certain cases under the supervision of a Legal Aid attorney.

For many years Columbia has had another student activity which serves to sensitize students to the needs of the poor and enables them to make a direct contribution to legal problems arising from those needs. The Legal Survey Group gives a few students research experience and significant participation in the areas of civil liberties and community welfare. In the more than twenty years of its existence Legal Survey has produced memoranda on a great range of subject matters suggested by civic organizations such as the American Civil Liberties Union, the NAACP, Citizen's Committee for Children, and the Federation of Jewish Philanthropies.

The Arthur Garfield Hayes Civil Liberties Program has given students at New York University the opportunity to participate in furnishing written legal assistance in a large number of civil liberties and civil rights cases and to participate in research projects aimed at the disseminating information or drafting corrective legislation. The Program during the past year held an important conference on Poverty, Civil Liberties and Civil Rights, and offered a seminar in Political and Civil Rights.

What about new courses sparked by the new interest in the legal problems of the poor? Some have appeared and others will be added to the curriculum. Such new courses are likely to reflect the interest of an individual teacher rather than a judgment about curriculum on the part of a faculty and most of them will be offered to relatively few students. The curriculum is crowded and new subject matter is added slowly--usually on an elective basis after the prodding of a dedicated colleague.

If the past of the law schools is an index to the future, the spread of courses will await the creation of a course book. The lack of easily available teaching material is a high hurdle in the path of classroom experimentation.

V. The Students

Will law schools find students interested to participate in law school work designed to help the poor? Are not the schools, particularly those on the eastern seaboard, xx heavily populated with the future men of Wall Street unconcerned with the impact of the law on poverty? Make no mistake about it, there is a substantial number of students avidly interested, even at my school. As a teacher of criminal law and family law, I have often been confronted with the disagreeable task of telling idealistic students that the poor have no money and hence, cannot provide a career for the

student who wishes to serve them. I predict that legal service units throughout the country will not have a difficult time in being staffed with idealistically motivated lawyers of good quality. I am sure that the problem will be the reverse. More youngsters of quality will want to participate than can be sustained with the funds provided.

Students themselves have already shown us their interest. The Law Students Civil Rights Research Council, organized by the youngsters themselves with a minimum of faculty and law school support, has organized wide-ranging activity designed to serve the poor and the victims of racial discrimination during this very summer. The Council has had the imagination and energy to conduct a Conference on Law and Poverty. The generous way in which large numbers of students have given their time tells us of student interest.

The student population of the nation's law schools do present another problem. Not many students in the nation's law schools have come from the most deprived classes. Few Negroes have seen a law career as one toward which they might reasonably seek to prepare themselves. In part, the barriers are economic, but in part the barrier is one of vision. A person who does not see a career goal never tries to attain it. Few of us, I take it, are pursuing courses with an aim of becoming an astronaut.

If it is desirable, and I think it is, for the legal profession to be broadly based, for its members to come from a great variety of social settings, then the schools must make affirmative efforts to interest qualified persons in a legal education. Happily some law schools are actively seeking students from the ranks of the poor in just such a way. Scholarship money can surely be raised for this purpose.

To achieve a broader based legal profession, it may be necessary to provide special coaching for young men and women capable, but with abilities

stunted by mis-education. Perhaps we should create summer programs to remedy the deficiencies left by poor early training. Perhaps we should make serious inquiry whether the selection processes we use do not unreasonably reject able young men and women from the lower classes.

VI. Private Action by Faculty Members

Law school faculty members often play an active role in their communities. Many of them have been instrumental in setting up legal assistance units already. Both New York University and the Columbia Law School were (and are) actively interested in the creation and operation of the Legal Services Unit of Mobilization for Youth. In fact the Advisory Committee to Mobilization's Legal Unit is composed entirely of faculty members. In New York City faculty men have been involved in giving advice and support to those who are setting up a legal service program related to New York City's anti-poverty operation. Dean Pye's active work in the creation of the legal service program in the District of Columbia is well known. Others, such as Professor Sloane of West Virginia, have been instrumental in the formulating of local proposals for community action programs under the Economic Opportunity Act of 1964. Many faculty members are serving as consultants to the Office of Economic Opportunity and to communities who seek help in formulating proposals made to the Washington office. In fact if one were to look at the Board of Directors of almost any civic organization devoted to alleviating the conditions of the poor, one would find the boards well seeded with men and women from the schools.

Post admissions legal education is now an accepted part of the scheme of legal education in the United States. In recent days some of it has been devoted to the area of civil rights. My colleague, Professor Frankel,

has been organizing a series of seminars in civil rights law aimed at increasing the professional competence of lawyers who are heavily engaged in the field. Howard University Law School has now set up a program for training lawyers in various aspects of that part of the law having a special bearing on the poor. Organizing and participating in seminars of this sort over the country will undoubtedly be part of the life of the man of many tasks--the American law professor.

VII. Conclusion

There is a need for the professor to look at his subject matter from the perspective of all groups. Failing to do so will leave his teaching and scholarship incomplete. New areas of research are calling to the research-minded. Law School offerings and students activities are reflecting the new imphasis on the attempt to eliminate poverty. The enthusiasm with which such things are going forward is, to me, an occasion for surprise. Perhaps we lawyers find enthusiasm in the fact that we have a place in the quest for economic justice. We have learned again that we are not bound by our calling to the affairs of wealth and contract. Powerless men need some of us and many are eager to serve.